IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 134 OF 2006

Mr. Godrej Hormusji Albara.... Applicant/Petitioner

versus

Shriaz Byramji Anklesaria & anr..... Respondent.

Shri Y.S. Jahagirdar with K..P.Anilkumar forthe applicant.

Shri A.V.Anturkar with S.B.Deshmukh for the respondents 1 and 2.

CORAM; A.P. DESHPANDE, J.
DATED; 27TH APRIL, 2007

P.C.;

1. Before the District Judge, the present petitioners had raised an issue that the Plaintiff no.3 is not the landlord. The contention of the petitioner was to the effect that as per the trust deed plaintiffs 1 and 2 are the trustees and plaintiff no.3 would get the property only after the death of both the sisters. Thus the plaintiff no.3's claim for a decree for possession against the defendants is not sustainable. The said submission has been stated in para 10 of the judgment and order of the District Judge. But the issue has not been adjudicated upon. No categorical finding has been recorded in that regard. Realising this difficulty the learned counsel for the respondents Mr. Anturkar fairly concedes that the

judgment and order passed by the District Judge be quashed and set aside and the matter be remanded for de novo hearing and the decision of the appeal.

2. Mr. Jahagirdar the learned counsel for the petitioner is agreeable for the said course to be followed.

3. In view of the consent given by the learned counsel appearing for the respective parties, I quash and set aside the judgment and order passed by the III Ad-hoc District Judge dated 17-12-2005 in Civil Appeal No. 318 of 2002. The matter is remanded to the District court for de novo hearing and decision of the appeal. Having regard to the totality of the facts and circumstances, I am of the view that the District court should expeditiously decide the appeal. Hence I direct the District court to decide the the appeal as far as possible within a period of six months from today. Accordingly the revision application is allowed.

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